

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

Order Instituting Investigation into implementation of Assembly Bill 970 regarding the identification of electric transmission and distribution constraints, actions to resolve those constraints, and related matters affecting the reliability of electric supply.

Investigation 00-11-001
(Filed November 2, 2000)

**ADMINISTRATIVE LAW JUDGES' RULING
REQUESTING COMMENTS ON PROCEDURAL COORDINATION OF
RENEWABLES PROCUREMENT, TRANSMISSION PLANNING AND
STATUTORY INTERPRETATION OF PUB. UTIL. CODE § 399.25**

The purpose of this joint ruling is to notify parties of our proposed framework for coordinating the procurement process and transmission planning issues related to renewables in the above-referenced proceedings. The approach is based on our interpretation of the statutory mandates under Senate Bill (SB) 1078, in particular, § 399.25 added to the Public Utilities Code.¹ We request comments on our interpretation and the framework outlined below.

¹ Stats 2002, ch 516, Sher. All references to code sections in this ruling refer to the Public Utilities Code.

Overview of SB 1078

Among other things, SB 1078 created the Renewable Portfolio Standard (RPS) program in California, under which the state will increase its electrical generation from renewable sources by at least 1% per year, until the renewables comprise 20% of total investor-owned utility (IOU) procurement. Article 16 of SB 1078, commencing with § 399.11, describes the RPS program envisioned by the Legislature. It includes the submission of renewable energy procurement plans by the IOUs, accompanied by “a bid solicitation setting forth the need for renewable generation of each deliverability, characteristic, required on-line dates and locational preferences,” as applicable.²

SB 1078 also contains the following language, now codified as § 399.25:

399.25. (a) Notwithstanding any other provision in Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

(b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:

(1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

² § 399.14 (a)(3)(C).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with the transmission facilities.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

The language of § 399.25 is potentially relevant in these and other proceedings. In order to ensure a consistent understanding and application of this statute, we have laid out a proposed framework for how to implement its requirements, and we are requesting comments from interested parties.

Proposed Framework

All of the provisions of § 399.25 apply only to applications before the Commission that meet certain criteria. Accordingly, our primary task is to define what applications are subject to the requirements of Section 399.25. The relevant portion of subdivision (a) reads:

[A]n application of an electrical corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

First, there must be an application before the Commission from an electrical corporation for a certificate authorizing the construction of new transmission facilities. If there is no application before the Commission, § 399.25 does not apply. We note that the statute language refers to § 1003, which addresses the informational requirements for projects that are subject to Commission review. This confirms our interpretation that § 399.25 applies only to applications for transmission line construction/upgrades subject to this Commission's siting jurisdiction. Moreover, in referring to the general informational requirements of § 1003, the statute does not specifically distinguish between applications for a Certificate of Public Convenience and Necessity (CPCN) and applications for a Permit To Construct (PTC), as we have defined these terms in General Order (GO) 131-D. We preliminarily conclude that § 399.25 applies to both CPCN and PTC applications before this Commission, but seek further comment by interested parties on this interpretation.

Second, § 399.25(a) contains a prerequisite that the Commission find that the new transmission facility "is necessary" to facilitate achievement of the applicable renewable power goals. If the facility is an integral part of a renewables project approved pursuant to the RPS procurement process (i.e., a winning renewables bid), we believe that creates a prima facie finding that the transmission project will facilitate achievement of the renewable power goals set forth in Article 16 of SB 1078. However, the statute specifically states that the transmission project must be "necessary" to the achievement of those goals. In our view, this requires a further level of scrutiny to ensure that the proposed project is the appropriate option among possible alternatives. Generally, it is only during review of the utility's CPCN or PTC application that the Commission has an evidentiary record with which to consider alternate routes, locations or configurations. For both types of applications, GO 131-D requires the utility to

present reasons for selection of power line route or substation location, include comparisons with alternate routes or locations and discuss the advantages and disadvantages of each.³ Therefore, as a general rule, we envision that this finding is most appropriately made by the Commission in response to the utility's application for a CPCN or PTC for the transmission project.

A finding that the transmission project is “necessary” to facilitate the achievement of the renewables portfolio goals is reiterated in § 399.25(b)(1), which states in relevant part:

(b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:

(1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

However, this section of the statute—which relates to ratemaking treatment, rather than project need—includes an additional requirement: the Commission must also find that the transmission facilities “provide benefit to the transmission network.” Here again, we believe that the CPCN or PTC proceeding for the project is generally the appropriate forum in which to investigate and evaluate network benefits. To bifurcate this issue from the

³ See GO 131-D Sections IX.A.1.e. and IX.B.1.c. In addition, the California Environmental Quality Act (CEQA) may require the Commission to consider project alternatives in the CPCN or PTC application process.

evaluation of project need and project alternatives that otherwise takes place during the CPCN and PTC review would, in our estimation, be confusing to public participants and could strain both the Commission's and interested parties' limited resources on transmission issues. Nonetheless, we recognize that evaluating network benefits in each separate CPCN or PTC proceeding could promote some inconsistencies in evaluation methods across proceedings. To address this, we suggest that Energy Division monitor the methods being utilized across the various proceedings and develop recommendations to enhance the use of sound, consistent methods, as needed.

In sum, as a general framework for incorporating the requirements of § 399.25 into the planning process, we envision the following:

- The procurement proceeding will develop the rules and procedures for the RPS planning process and RPS renewables bidding program. If the transmission facility is an integral part of a renewables project approved pursuant to the RPS procurement process (i.e., a winning renewables bid), that creates a prima facie finding that the transmission project will facilitate achievement of the renewable power goals set forth in Article 16 of SB 1078.
- The Commission will make § 399.25(a) and § 399.25(b)(1) findings on whether a proposed transmission project is "necessary" to facilitate achievement of renewable power goals in the applicable CPCN or PTC proceeding, based on the results of the RPS procurement process and GO 131-D considerations of alternatives to the proposed project.
- In the applicable CPCN or PTC proceeding, the Commission will make § 399.25(b)(1) findings regarding whether the transmission facilities provide benefits to the transmission network.
- The Commission will continue to perform the appropriate CEQA review of CPCN and PTC applications, which may include consideration of project alternatives.

We recognize that the Commission cannot make all of the findings required under § 399.25 with respect to transmission project need and ratemaking until the RPS rules and procedures for the renewables bidding process have been developed and implemented. In the interim, we are proceeding with evidentiary hearings on one major renewables transmission project in the Transmission Investigation (I.00-11-001). As described in Judge Gottstein's January 29, 2003 ruling in that proceeding, there will be evidentiary hearings on the Tehachapi Transmission Project to address project network benefits, project costs, and other issues. We believe that it is prudent to move forward to develop an evidentiary record for this particular project before the RPS program is fully operational because (1) Southern California Edison Company is already proceeding with the biological studies to include in a CPCN application for this project, (2) the project costs, route and alternatives have been discussed over several months with industry participants, and (3) the project conceptual cost studies have been completed. Clearly, not all of the § 399.25 findings regarding this project can be considered by the Commission until the results of the RPS bid are known and the CPCN application is actually filed; but sufficient progress on some issues (e.g., network benefits) can be made over the next few months in the Transmission Investigation.⁴ As a general rule, however, we believe that the sequence and forum for making § 399.25 findings should follow the framework described above.

⁴ As Judge Gottstein also discussed in her ruling, the primary focus of the Transmission Investigation in the coming months will be to facilitate development of transmission project cost estimates for the RPS bidding process and to develop the SB 1038 report to the Legislature on renewable transmission plans.

Comments and Service Procedures

We solicit comments on our proposed framework and interpretation of SB 1078, described in today's ruling. Comments are due by March 11, 2003 and reply comments are due by March 17, 2003.

All comments shall be filed at the Commission's Docket Office and served electronically on all appearances and the state service list in Rulemaking 01-10-024 and Investigation 00-11-001. Service by U.S. mail is optional, except that one hard copy shall be mailed to Judge Peter Allen and Judge Meg Gottstein at the addresses listed on the service list. In addition, if there is no electronic mail address available, the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternate service (regular U.S. mail shall be the default, unless another means—such as overnight delivery—is mutually agreed upon). The current service lists for these proceedings are available on the Commission's web page, www.cpuc.ca.gov.

Dated February 25, 2003, at San Francisco, California.

/s/ MEG S. GOTTSTEIN

Meg S. Gottstein
Administrative Law Judge

/s/ PETER V. ALLEN

Peter V. Allen
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judges' Ruling Requesting Comments on Procedural Coordination of Renewables Procurement, Transmission Planning and Statutory Interpretation of Pub. Util. Code § 399.25 on all parties of record in Rulemaking 01-10-024 and Investigation 00-11-001 or their attorneys of record.

Dated February 25, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.